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State of New Hampshire
PUBLIC UTILITIES COMMISSION
Concord 03301
Telephone Area Code 603
271-2452

David
Vincent J. Iacopino

SECRETARY

LOC 10-101
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Federal Communications Commission
Office of the Secretary

April 24, 1979

DOCKET FILE COPY ORIGINAL

Mr. W. Randolph Young
Chief, Tariff Division
for Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D. C. 20554

Re: New Hampshire Pole Attachment Certification
Case 9560

Gentlemen:

We are in receipt of your letter of March 29, 1979 seeking clarification of the intent of our letter of February 2, 1979 concerning certification of New Hampshire in the regulation of CATV pole attachment rates, terms and conditions.

The New Hampshire State Statute (RSA 378:1) provides that every public utility file with this Commission all schedules showing rates, fares, charges and prices for any service rendered. No changes can be made to those rates or charges without Commission Approval RSA 378:3). Rates and charges are generally published in individual utility company tariffs, which, having been subjected to Commission investigation and review and ultimately approved by Commission Order, have the effect of New Hampshire law. An obvious intended result of the regulatory process is to assure that no public utility makes or give any undue or unreasonable preference to any customer. Such assurance is, in fact, guaranteed further by Statute (RSA 378:10).

New Hampshire law does recognize, however, that situations may arise which require that rates or charges be set for specific applications which do not come under the purview of the utility tariff. RSA 378:18 provides that special contracts for service at rates other than those fixed in a company's tariffs may be made if the Commission finds them consistent with the public interest. The Commission allows, by order, such contracts to take effect. Those contracts are filed and made public at the Commission offices and, in effect, constitute a part of the published schedules of the public utility.

Mr. W. Randolph Young
April 24, 1979
Page two

CATV Pole Attachment Rates are set forth in such special contracts. They are submitted to the Commission upon concurrence of both parties and the Commission considers and approves them consistent with the above referenced statutes. The Commission's authority in the matter of special contracts finds its origin in New Hampshire law dating back to 1913.

The Commission's position relative to its jurisdiction over the contracts of CATV Pole Attachment Rates has been firm and consistent for many years. Our files disclose frequent correspondence between this Commission and yours explaining the statutory obligations of this Commission in such matter. It was a reiteration of our position which we attempted to convey in our letter of February 2, 1979.

We are aware of your first report and order in CC Docket 78-114 adopted August 8, 1978 and of the consideration that a State Agency, in order to regulate the pole attachment provisions of the CATV industry must (1) regulate the rates, terms and conditions for pole attachments and (2) consider the interests of the subscriber of cable television services as well as the interests of the consumers of the utility services.

The Commission clearly regulates the former. It currently has jurisdiction over the latter, however, only to the extent that our statutory responsibility generally requires our consideration of the public good and our assurance that all schedules of rates be just and reasonable. We have no current statutory authority to specifically consider the interests of the subscribers of cable television services.

The New Hampshire Legislature is currently in session. It is considering new statutory wording which will give this Commission that specific authority.

The intent of our letter of February 2, 1979 was to explain this Commission's statutory authority in rate-making matters and to direct your attention specifically to our authority over special contracts, including the contracts of cable TV pole attachments and to provide you with adequate information on which to determine whether or not we satisfactorily complied with your first report and order to certify State jurisdiction in the matter. We trust that this supplemental information will further assist you in that decision.

Very truly yours,

N. H. PUBLIC UTILITIES COMMISSION



Bruce B. Ellsworth
Chief Engineer

603-271-2447

March 29, 1979

MAIL BRANCH

MAR 29 1979

9560

State of New Hampshire
Public Utilities Commission
Concord, N.H. 03801

SIGNED BY ABOVE
MAILED BY

Attention: Bruce B. Ellsworth, Chief Engineer

Re: New Hampshire Pole Attachment Certification; Section
1.1414 of the Commission's Rules

Gentlemen:

On March 23, 1979 Mr. Paul R. Cianelli, General Counsel for the New England Cable Television Association, wrote us seeking clarification of the intent of your letter of February 2, 1979 concerning certification of New Hampshire in the regulation of CATV pole attachment rates, terms, and conditions.

Upon review of your letter of February 2, we determined that the requisite elements of jurisdictional preemption were satisfied. Accordingly, we included New Hampshire in our March 6, 1979 public notice listing of states that have certified pursuant to Section 1.1414 of our Rules.

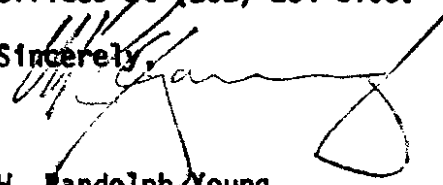
Mr. Cianelli, however, following verbal contact with you, is of the view that you did not actually intend to submit your letter for purposes of certification. He asks that we inquire as to 1) whether the New Hampshire Public Utilities Commission has the authority to consider, and does consider, the interests of the subscribers of CATV and utility services in regulating CATV pole attachment rates, terms, and conditions; and 2) whether your letter of February 2, 1979 was "...intended as a certification pursuant to Section 1.1414(b) of the FCC's Rules."

In order to resolve Mr. Cianelli's inquiry and to ascertain with certainty New Hampshire's status with regard to the regulation of CATV pole attachment matters, we request that you clarify the intent of your February 2, 1979 letter. If you intended the letter to serve as certification pursuant to Section 1.1414 of our Rules, a specific statement to that effect will suffice. If you choose to withdraw your February 2 letter or claim that it was not submitted for purposes of asserting preemption, please so state. In any case, your response within 7 days of the date of this letter

is requested. Please include a statement that the signatory to your response has lawful delegated authority under provisions of New Hampshire law to represent the Public Utility Commission in these matters.

If you have any questions, please contact James M. Talens, General Attorney, at Commission offices at (202) 254-8100.

Sincerely,



W. Randolph Young
Chief, Tariff Division
for Chief, Common Carrier Bureau

cc: Paul R. Cianelli

JTalens:lat/td:CC





NEW ENGLAND CABLE TELEVISION ASSOCIATION

POST OFFICE BOX 321 TILTON NEW HAMPSHIRE 03276 (603) 286-4473

March 23, 1979

Mr. Arthur H. David
Chief, Pole Attachment Branch
Common Carrier Bureau
Room 522
1919 M Street, N.W.
Washington, D. C. 20554

RE: Request for Clarification of the New Hampshire
Certification Pursuant to §1.1414(b) of the FCC's
Rules on CATV Pole Attachments

Dear Mr. David:

The New England Cable Television (NECTA) is a non-profit trade association representing substantially all cable television systems in New Hampshire, Massachusetts, Vermont, Maine and Rhode Island. In particular, NECTA represents all New Hampshire cable television systems in this matter.

On February 2, 1979 Mr. Bruce B. Ellsworth, Chief Engineer of the New Hampshire Public Utilities Commission (P.U.C.) sent to you a two-page letter which you believed to be a certification pursuant to Section 1.1414(b) of the FCC's rules on cable television pole attachments.

Mr. Ellsworth has advised me that: (1) he never intended this to be a certification pursuant to the FCC Rules; and (2) while he clearly stated that the N. H. P.U.C. regulates the rates, terms and conditions of pole attachments, he intentionally omitted any reference that in so regulating such rates, terms and conditions that the N.H. P.U.C. has the authority to consider and does consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility services.

Mr. Ellsworth's letter has a great number of ambiguities; however, his letter never clearly states that in regulating such rates, terms and conditions the N. H. P.U.C. has authority to consider and does consider the interests of cable television subscribers as well as the interests of the consumers of utility services pursuant to Section 1.1414(a)(2) of the FCC Rules.

March 23, 1979
Page Two

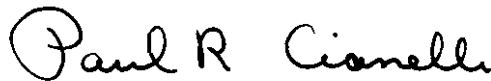
As a result of this ambiguous letter from the N.H. P.U.C., my personal conversation with Mr. Ellsworth and the FCC's conversation with Mr. Ellsworth, I respectfully request the FCC to clarify Mr. Ellsworth's letter by specifically requesting from Mr. Ellsworth the following information:

1. Does the New Hampshire Public Utilities Commission, in regulating cable television pole attachment rates, terms and conditions have authority to consider and actually consider the interests of the subscribers of cable television services, as well as the interests of the consumers of utility services pursuant to Section 1.1414(a)(2) of the FCC's Rules on cable television pole attachments?
2. Was the letter of February 2, 1979 intended as a certification pursuant to Section 1.1414(b) of the FCC's Rules?

I respectfully request immediate action on this clarification since the New Hampshire Legislature has pending before it H. B. 610 which would give the N. H. P.U.C. the specific authority required by the FCC's Rules.

If you have any questions regarding this matter, please don't hesitate to contact me.

Respectfully submitted,



Paul R. Cianelli
General Counsel

C/w

CHAIRMAN
ALEXANDER J. KALINSKI
COMMISSIONERS
FRANCIS J. RIORDAN
MALCOLM J. STEVENSON



RECEIVED

FEB. 9 1979

Vincent J. Iacopino
SECRETARY

ABLE TV BUREAU

State of New Hampshire

PUBLIC UTILITIES COMMISSION

Concord 03301

Telephone Area Code 603

271-2452 2447

February 2, 1979

RECEIVED BY FCC
MAIL BRANCH ON

7 1979

6214
Federal Communications Commission
1919 M Street N. W.
Washington, D. C. 20554

Re: Pole Attachment Legislation - HR7442 - P.L. 95-234

Gentlemen:

In connection with the above captioned legislation regarding the pole attachments between a utility company under the jurisdiction of this Commission and a cable television company, this will certify that the State of New Hampshire regulates the rates, terms and conditions for pole attachments.

As a matter of practice the utility company involved and the cable television company involved submit a proposed agreement to this Commission regarding the rates, terms and conditions of the attachment of cable television facilities to utility facilities. Our Commission, pursuant to its general authority of New Hampshire utilities and pursuant to its specific authority of RSA 378:18 examines these contracts to determine whether or not the rate charged by the utility to the cable television company is just and reasonable.

Our Commission assures that the utility involved recovers not less than the additional cost of providing the pole attachment nor more than the actual capital and operating expenses of the utility attributable to that portion of the pole, duct or conduit used by the pole attachment. This standard is applied to every contract between a utility company and a cable television company and the above language appears in the contracts on file and approved by this Commission between utility companies and cable television companies.

For your information the State of New Hampshire has one statute expressly dealing with cable television systems. New Hampshire Revised Statutes Annotated Chapter 53-C entitled "Franchising and Regulation of Cable Television Systems by Cities and Towns" provides cities and towns with franchising authority to grant a franchise to install and operate cable television systems within the geographic limits of its respective towns or cities. That statute provides that the franchising authority may require reasonable fees payable to the municipality and may impose conditions not inconsistent with applicable rules and regulations of the F.C.C. The State of New Hampshire has not taken to itself the authority of granting franchises but has left this to the individual cities and towns. In addition, there is no regulation as to the rates that a cable television company charges to its subscribers.

"Live Free or Die"

Federal Communications Commission

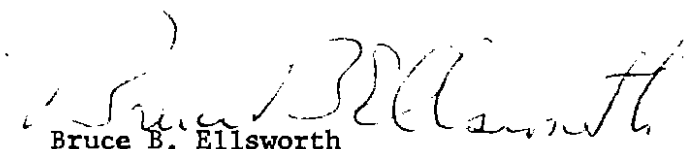
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February 2, 1979

The foregoing is a complete picture of the State of New Hampshire as it relates to the cable television industry and on the basis of the existence of this state of facts this Commission can certify to the foregoing which in effect provides the necessary protection of the public interest in these matters that was sought to be accomplished by HR 7442 (P.L. 95-234). Thus, there is no need for the FCC through the new pole attachment legislation to assert any jurisdiction the State of New Hampshire.

Very truly yours,

N. H. PUBLIC UTILITIES COMMISSION


Bruce B. Ellsworth
Chief Engineer

BBE:ehw